Supreme Court, U.S.
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No. 99-1320

In The

Supreme Court of the United States

JOSEPH BALDWIN CAMPBELL,

Petitioner,

vs.

T.J. SLETTEN AND BEN NIBBE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS SLETTEN'S AND NIBBE'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the United States Court of Appeals for the Eighth Circuit correctly affirm the judgment of the District Court holding that Campbell did not adequately allege a property-based constitutional claim against Sletten and Nibbe for the destruction and removal of Campbell's property by private actors without the knowledge of Sletten or Nibbe?

2. Did the "reasonable belief of reasonable suspicion" language in the District Court's Order granting summary judgment to defendant merely confirm that qualified immunity also applies to *Terry* stops?

3. Did the United States Court of Appeals and the District Court properly hold that Lieutenant Sletten and Deputy Nibbe are entitled to qualified immunity for Campbell's Section 1983 claims?

CORPORATE LISTING

There are, as between the parties identified in the case caption, no non-governmental corporate parties to this litigation.

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JURISDICTION

Rule 10 of the Rules of the Supreme Court of the United States provides that this Court may grant a petition for certiorari only for compelling reasons. According to Rule 10, compelling reasons may be found if there is a conflict of authority between another court of appeals or state court of last resort on the same issue or if the decision reflects a far departure from the usual course of judicial proceedings or if the decision presents an important question of federal law that has not been but should be settled by this court.

Petitioner has not set forth an adequate basis to justify the exercise of the Court's discretionary jurisdiction. He does not and cannot contend that the decision by the Eighth Circuit Court here has created a split of authority among the federal courts, or between the federal and state courts. Instead, Petitioner attempts to invoke this Court's authority by asserting that the lower courts misapplied the law to the facts as testified by Petitioner. Petitioner has failed to set forth a sufficient basis for review by this Court. Further, for the reasons explained below, there was no error in the lower courts' decisions in this case.

STATEMENT OF THE CASE

This action arises from an incident in which Respondent Police Officer Sletten and Deputy Nibbe arrested Petitioner Campbell for obstructing legal process and

trespassing. Campbell alleged federal civil rights violations against Nibbe and Sletten. The United States District Court granted the summary judgment motions of Sletten and Nibbe and dismissed all of Campbell's claims. The District Court's judgment was affirmed by the Eighth Circuit Court of Appeals.

Campbell claims the United States District Court improperly adjudicated disputed issues of material fact. Campbell never identified any of these claimed disputed facts to the District Court or the Court of Appeals. There were no disputed facts since Sletten's and Nibbe's motion for summary judgment relied on the testimony of Campbell in support of their summary judgment motion.

The following facts are not disputed:

In 1993 Campbell possessed a temporary assignment for land located at 5636 Sturgeon Lake Road on the Prairie Island Indian Reservation in Minnesota. Under certain conditions, such temporary assignments may be canceled. However, it is a complex and intricate legal issue to determine whether a land assignment has been validly canceled. Whether a temporary land assignment has been validly canceled requires review of federal regulations, eliciting the opinion of the solicitor from the Department of Interior and persons in the land department of the Bureau of Indian Affairs (BIA), and review of the Constitution and Bylaws of the Prairie Island Indian Community.

On May 12, 1993, Campbell signed an agreement with the Prairie Island Tribal Community relinquishing any and all legal rights that he possessed in the temporary land assignment located at 5636 Sturgeon Lake Road.

A quorum of the Prairie Island Tribal Council Members signed the Agreement, which made it valid and binding. Campbell testified that he considered the May 12 Agreement to be a binding agreement which should be followed by all parties.

At the time Campbell signed the Agreement it was his intention to leave the land assignment. Campbell began moving some of his belongings to a temporary residence.

On July 30, 1993, Campbell signed another agreement with the tribe whereby he agreed to immediately commence moving from 5636 Sturgeon Lake Road.

On September 17, 1993, Campbell received a letter from the Prairie Island Indian Community Assistant General Counsel that clearly took the position that the property at 5636 Sturgeon Lake Road belonged to the tribe and did not belong to Campbell. The correspondence from the tribal representative indicated the tribe would move Campbell if he did not vacate. Campbell interpreted the letter to mean the tribe was going to move him off the property whether he was present or not.

On September 24, 1993, Campbell received another letter from the tribe's Assistant General Counsel indicating that the deadline to remove all property from the expired land assignment had run. The letter further indicated that any structures or buildings left on the expired land assignment will be bulldozed on Monday, September 27, 1993.

Also on September 24, 1993, Campbell received a trespass notice from the Prairie Island Tribal Council for 5636 Sturgeon Lake Road. The trespass notice specified that the Prairie Island Indian Community has the right to possession of 5636 Sturgeon Lake Road and that Campbell was a trespasser. The trespass notice indicated that it was authorized by the action of the Prairie Island Tribal Council and was signed by a tribal council representative and the tribal chairman. Campbell made no attempt in any court to address the trespass notice or the impending demolition of his property. Campbell understood that the trespass notice was effective Monday, September 27, 1993.

On September 28, 1993, Lieutenant Tim Sletten of the Red Wing Police Department, was called upon to assist the Prairie Island Tribal Community in dealing with a trespass involving Campbell. At approximately 8:00 a.m., Sletten drove to 5636 Sturgeon Lake Road and met with Pete Poncelet, legal counsel for the Prairie Island Tribal Community. Poncelet explained that the tribe had reached an agreement with Mr. Campbell and that the land now belonged to the tribe. Poncelet also indicated that Campbell had been given notice to leave the property, that he was trespassing and no longer had a right to the property.

During these discussions, another tribal attorney was also present along with Poncelet. The tribal attorneys told Lieutenant Sletten the Tribal Council had reached an agreement with Campbell that the land assignment was no longer in effect and the Tribal Council now had control and right to the property. Lieutenant Sletten was further told Campbell was no longer going to be allowed to stay there. Sletten believed the representations of the Prairie

Island Community legal representatives, that the Prairie Island Community owned the land, were true.

Lieutenant Sletten was at the entrance of the property's driveway when Campbell approached in his car. Campbell testified Sletten's vehicle was blocking the driveway and when Campbell asked him to move it, Sletten told him there were some papers on the way. Based upon the information that he had received from the Prairie Island Tribal Council attorneys, Sletten advised Campbell that if Campbell went back to the property he would be considered to be trespassing. Campbell told Sletten he was going to go back to the house and call his attorney and the BIA. Campbell then went back into the house where he made telephone calls and used his fax machine.

Campbell came back outside and talked to a tribal attorney, who told Campbell today was the day he was supposed to be off the property. Campbell went back inside the house. By this time Goodhue County Deputy Nibbe had arrived. When Campbell came out again, Deputy Nibbe told Campbell he had documents establishing Campbell was trespassing. Nibbe gave Campbell the very same trespass notice authorized by the Prairie Island Tribal Council that Campbell had received on September 24, 1993.

Campbell knew that Nibbe and Sletten were law enforcement officers. Campbell was told by Deputy Nibbe that he was trespassing, that he would not be allowed to go back into the residence and that he should leave the premises. Campbell still attempted to go back into the residence. Campbell turned toward the house to

go back inside. At that time Lieutenant Sletten and Deputy Nibbe each grabbed one of Campbell's arms to prevent him from returning to the residence. Sletten grabbed Campbell by the arm to give him the chance not to go back (to the house) so he would not be arrested.

In response, Campbell commanded his dog, a black lab-shepherd mix weighing 75-80 pounds to "sic" the officers. Campbell testified, he sicked the dog on the officers before he was informed he was under arrest. Campbell told the dog to "sic" the officers because the officers had a hold of Campbell. Campbell admitted he intentionally sicked his dog on the officers to get the officers to let him go. The dog came near the officers, barked and appeared agitated. Campbell admitted the dog "could have gotten brutal if he wanted to" and the dog got close enough so that the officers would be fearful of being bit.

After each officer grabbed one of Campbell's arms, Campbell jerked his arms to get free. The officers fell down on the ground. Campbell testified he was not under arrest until after he caused the officers to fall to the ground.

At the time of his arrest, no demolition equipment or construction crews were on the property.

Following his arrest, Campbell was issued a citation for resisting arrest contrary to Minn. Stat. § 609.50, subd. 1(1) & (2) and trespassing contrary to Minn. Stat. § 609.605.

He was transported to the Goodhue County Jail where he was booked and then released at approximately

3:00 p.m. that same afternoon. Following his arrest, Campbell had no conversations with Nibbe and Sletten or any police officers from either Red Wing or Goodhue County on the subject of returning to the property.

The demolition of the buildings on the property took place on September 29, 1993, one day after his release from jail. The demolition crews worked for the tribe. Sletten or Nibbe had no knowledge or involvement whatsoever concerning the destruction of the property.

REASONS FOR DENYING THE WRIT

I. The United States Court of Appeals for the Eighth Circuit correctly affirmed the judgment of the District Court holding that Campbell did not adequately allege a property-based constitutional claim against Sletten and Nibbe for the destruction and removal of Campbell's property by private actors without the knowledge of Sletten or Nibbe.

Campbell argues that the District Court and Court of Appeals erroneously denied Campbell's claim that he had a constitutional right to hold his land assignment without interference from local law enforcement officers. Campbell's framing of the issues simply misrepresents the lower courts' decisions. This assertion is not only a gross distortion of the District Court's holding, but completely ignores the District Court's careful review of Campbell's own criminal actions in obstructing legal process which led to his arrest.

However Campbell mischaracterizes the District Court's decision, he cannot establish a claim against the

officers for alleged deprivation of his property. Foremost, the undisputed evidence shows that Nibbe and Sletten had no knowledge of, nor did they participate in the removal or destruction of Campbell's property. On the contrary, the undisputed evidence demonstrates that the Tribal Council alone arranged for the removal of Campbell's personal property from Campbell's land assignment. (Pet. 3).

Campbell admitted the property was not destroyed until the day following his release from jail. Campbell admits that neither Sletten nor Nibbe told him not to return to the property. Nonetheless, Campbell asserts that Sletten and Nibbe were responsible for the destruction of his property.

Campbell's assertion is incorrect because Sletten and Nibbe had no duty to prevent the wrongdoing of third parties. The United States Supreme Court has held:

> "nothing in the language of the due process clause itself requires the state to protect the life, liberty, and property of its citizens against invasion by private actors. The clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security."

DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 196 (1989). The Court further noted the purpose of the due process clause is to protect people from the State, not to ensure the State protected people from each other. *DeShaney*, 489 U.S. at 196.

DeShaney, does apply to preclude Campbell's claim. The District Court currently held that, not only was

Campbell not in custody at the time the tribe took action against his property but the damage to Campbell's property is "too remote a consequence of the . . . officer's action to hold them responsible under the federal civil rights law." *Martinez v. State of California,* 444 U.S. 277, 285 (1980). (Pet. 13a). Moreover, the fact that Campbell's arrest was legal, severs any causal connection between the officer's action and any damage to Campbell's property. *Grant v. Farnsworth,* 869 F.2d 1149, 1151 (8th Cir. 1989).

An arrest does not give rise to a cause of action for deprivation of Section 1983 if it is made with probable cause. *Pritz v. Hackett,* 440 F.Supp. 592 (W.D. Wis. 1977). The Court of Appeals and the District Court properly concluded that probable cause existed to arrest Campbell because Campbell attempted to re-enter the residence after being ordered by the officers not to do so; because when the officers then each grabbed one of his arms he jerked away causing the officers to fall to the ground; and because he sicked his dog on the officers with the admitted intention of causing fear of immediate bodily harm. (Pet. 2a, 4a, 17a).

A. Campbell's allegation that the officers violated Minn. Stat. § 566.05-.06 does not establish a constitutional violation that is actionable under 42 U.S.C. 1983.

Campbell asserts that the process of his removal violated Minn. Stat. § 566.05 and § 566.06. (Pet. 15). These statutes do not even apply in the circumstances set forth

in this case as the statutes relate to landlord-tenant situations.

Moreover, a Section 1983 claim can only be sustained by allegations and proof of a violation of the United States Constitution or federal statutes. Such a claim may not rest solely on a violation of state statutes. *Gordon v. Degelmann*, 29 F.3d 295 (7th Cir. 1994); *Myers v. Morris*, 810 F.2d 1437 (8th Cir. 1987) *cert. denied*, 484 U.S. 828, (1987).

B. There is undisputed evidence that probable cause existed to arrest Campbell for trespassing.

The test for determining the lawfulness of Campbell's arrest for trespass was whether it was made with probable cause. *Lundeen v. Renteria*, 302 Minn. 142, 224 N.W.2d 132 (1974). One of the grounds for establishing a trespass under Minn. Stat. § 609.605 is that the person, without claim of right, refuses to depart from the premises on demand of the lawful possessor.

Here the officers received written and verbal representations from the tribe that Campbell no longer had the permission or right to enter the property and that any further entry into the property would constitute a trespass. The written notice came from the Prairie Island Tribal Council Chairman. A police officer is entitled to rely on information provided by a victim of a crime, absent some indication the victim was not reasonably trustworthy or reliable. *Clay v. Conlee*, 815 F.2d 1164, 1168 (8th Cir. 1987); *Brotzler v. Scott County*, 427 N.W.2d 685 (Minn. App. 1988) *rev. denied* September 16, 1988; *Miloslavsky v. AES Engineering Sop. Inc.*, 808 F.Supp. 351 (S.D.

N.Y. 1992) *aff'd.* 993 F.2d 534 (2nd Cir. 1993). By Campbell's own admission, after being told in person and in writing that he was considered to be trespassing and that further entry into the property would constitute a trespass, Campbell again attempted to re-enter the premises. It was at that point the officers took him into custody.

Similar to Campbell's claim here, in *Kelley v. Myler*, 149 F.3d 641, 647 (7th Cir. 1998), the issue was whether the officers had a right to rely on information from a third party that an individual was trespassing. There the Seventh Circuit noted:

> We have held that when an officer receives information from a third party whom the officer has reason to believe is telling the truth, the officer has probable cause . . . [t]he fact that Kelley was not actually convicted of trespass does not mean that there was not probable cause for her arrest. As we have noted, "Probable cause does not depend on the witness turning out to have been right; it's what the police know, not whether they know the truth that matters."

Kelley at 647.

Sletten and Nibbe had no indication the legal representatives of the Prairie Island Tribal Council were not reasonably trustworthy or reliable. Consequently, Sletten and Nibbe had a right to rely on their representations in determining whether probable cause existed to arrest Campbell for trespassing.

The arrest of Campbell fits squarely within the standard for determining probable cause as defined by the

United States Supreme Court in *Beck v. Ohio*, 379 U.S. 89, (1964):

> Whether that arrest was constitutionally valid depends in turn upon whether, at the moment the arrest was made, the officer had probable cause to make it – whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.

Beck at 91.

Campbell also asserts the officers refused to pass a letter from his attorney, to the attorneys for the tribe. This is not relevant to the issues in this case and directly contradicts Campbell's deposition testimony where he repeatedly testified he gave such a letter to the tribal attorneys. A party cannot avoid summary judgment by directly contradicting his own earlier testimony. *Prosser v. Ross*, 70 F.3d 1005 (8th Cir. 1995); *Camfield Tires Inc. v. Michelin Tire Corp.*, 719 F.2d 1361, 1365 (8th Cir. 1983).

Campbell complains the trespass notice cited a subdivision of Minn. Stat. § 609.605 which had been renumbered prior to 1993. Regardless of whether the numbering of the subsection in Minn. Stat. § 609.605 had been changed, the trespass notice clearly indicated that according to the tribal council, Campbell no longer had the permission to and the right to the property located on the Prairie Island Indian Reservation.

Therefore, Officer Sletten and Deputy Nibbe had reasonable grounds to believe they had probable cause to arrest Campbell for trespassing.

C. There is undisputed evidence probable cause existed to arrest Campbell for obstructing legal process.

The Court of Appeals and the District Court agreed with Sletten's and Nibbe's assertions that the officers had a valid basis to arrest Campbell for obstructing legal process as prohibited by Minn. Stat. § 609.50 (1993). The statute states:

> § 609.50. Obstructing Legal Process, Arrest or Fire Fighting.
>
> Subdivision 1. **Crime.** Whoever intentionally does any of the following may be sentenced as provided in subdivision 2.
>
> (1) obstructs, hinders or prevents the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or conviction of a criminal offense;
>
> (2) obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties.

Officer Sletten and Deputy Nibbe were present at 5636 Sturgeon Lake Road in response to a complaint by representatives of the tribal council that Campbell was trespassing on their property. After the officers repeatedly told Campbell he was not to return to the property, Campbell attempted to return to the residence. When the officers attempted to stop Campbell by grabbing his arms, Campbell responded by jerking his arms away, causing the law enforcement officers to fall to the ground. The lower courts in this case agreed that such conduct by Campbell constitutes obstructing, resisting or interfering

with a law enforcement officer engaged in the performance of official duties contrary to Minn. Stat. § 609.50. (Pet. 4a, 17a).

The District Court, citing Minn. Stat. § 387.03 and *Hoppe v. Klapperich*, 28 N.W.2d, 780, 789 (Minn. 1947), correctly determined Deputy Nibbe reasonably believed he had a facially valid notice. (Pet. 15a).

A similar Minnesota case involved a dispute between parties over the right to remain on real property. There the appellants claimed right to possession of a hunting cabin. When they refused to leave, they were arrested for trespass. *Perkins v. County of St. Louis*, 397 N.W.2d 405, 406 (Minn. App. 1986) *rev. denied* January 16, 1987. The court stated:

> In determining whether Lundgren had probable cause to arrest appellants, we do not decide the merits of the appellant's claim to the property. We need only determine whether the trial court properly found that Lundgren acted reasonably and lawfully under the circumstances.

Id. at 408.

In *Saldana v. Garza*, 684 F.2d 1159 (5th Cir. 1982), *cert. denied* 460 U.S. 1012 (1983), the court dismissed a Section 1983 false arrest claim in which the plaintiff contended he was arrested for public intoxication while standing on his own driveway. In dismissing the action the court noted:

> Certainly we cannot expect our officers to carry surveying equipment and a decennial digest on patrols; they cannot be held to a title searchers' knowledge of meets and bounds or legal scholars expertise in constitutional law.

Saldana v. Garza, 684 F.2d at 1165.

Even if, for argument's sake, we accepted Campbell's assertion that his arrest for trespass was unlawful, the arrest for resisting arrest was lawful under Minn. Stat. § 609.50. The Minnesota Supreme Court and the Eighth Circuit Court of Appeals do not recognize a defendant's right to resist an unlawful arrest or search. *State v. Wick*, 331 N.W.2d 769, 771 (Minn. 1983); *United States v. Dawdy*, 46 F.3d 1427 (8th Cir. 1994) *cert. denied* 516 U.S. 872 (October 2, 1995); *see also State v. Ingram*, 570 N.W.2d 173 (Minn. App. 1997), *rev. denied* December 22, 1997; and *City of St. Louis Park v. Berg*, 433 N.W.2d 87 (Minn. 1988). As the Court stated in *St. Louis Park v. Berg*:

> . . . assaultive conduct is not justifiable solely on the grounds that the officers are violating the defendant's Fourth Amendment rights or on the ground that the defendant believes that the officers are violating his rights.

Id. at 91.

Here, the arrest did not occur until after Campbell pulled away from the officers with enough force to cause the officers to fall to the ground. Unquestionably, the officers had probable cause to arrest Campbell at that point for obstructing legal process. Moreover, it is clear the officers also had probable cause to arrest Campbell at that point for assaulting the officers by sicking the dog on them.

Campbell ignores the fact probable cause existed to arrest him for his actions towards the police officers, independent of whether probable cause existed to support the arrest for trespass. This precise situation was

reviewed by the Fifth Circuit in *Pfannstiel v. City of Marion*, 918 F.2d 1178 (5th Cir. 1990). There the arrestee brought a Section 1983 action against police officers for false arrest. The court stated:

> Pfannstiel argues that the defendant lacks probable cause to arrest him for criminal trespass because trespass had occurred on the lot for years and because he was arrested on a public highway. We need not resolve these issues because the defendant had probable cause to arrest Pfannstiel for disorderly conduct.

Id. At 1183.

Therefore, Campbell simply has no basis in which to assert a Section 1983 claim against Sletten or Nibbe for his lawful arrest and allegations of deprivation of his property.[1]

II. The "reasonable belief of reasonable suspicion" language in the District Court's Order granting summary judgment merely confirmed that qualified immunity also applies to *Terry* stops.

Campbell's primary argument against the application of qualified immunity is the claim that the District Court utilized the wrong standard in applying qualified immunity as to the detention of Plaintiff. Completely separate and distinct from the issue of whether a *Terry* stop

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[1] Campbell also claims damages as a result of not being read the Miranda rights. Even if the officer did not properly advise him of the Miranda rights, a violation of Miranda rights does not give rise to a Section 1983 claim. *Bey v. Bridgeton*, 775 F.Supp. 1255 (E.D. Mo. 1991).

occurred or whether a *Terry* stop was proper, the Court of Appeals analyzed the seizure of Campbell for criminal trespass. *Terry v. Ohio*, 1 U.S. 392 (1968). The Court of Appeals found the officers had sufficient grounds to arrest Campbell for criminal trespass based on an investigation by the officers, a facially valid trespass notice and a refusal to leave the property upon demand. (Pet. 4a). This basis for arrest preceded any seizure because "when the officers served Campbell with the trespass notice, he turned around to re-enter his home on the land." (Pet. 2a).

According to Campbell, the court's finding the officers had a reasonable belief for a reasonable suspicion that Campbell was trespassing, before they attempted to detain him, constitute grounds for reversing the District Court. Campbell claims the term "reasonable belief" leads to a subjective application which is in conflict with the objective standards established by the United States Supreme Court.

Both the District Court and the Court of Appeals, at length and in detail, analyzed the proper criteria for establishing qualified immunity. The District Court used the phrase "reasonable belief of reasonable suspicion" referring to the right of the officers to detain Campbell. The standard for an investigatory stop is whether a "reasonable suspicion" exists. *Terry v. Ohio*, 392 U.S. 1 (1968). "Reasonable belief of a reasonable suspicion" is nothing more than the application of qualified immunity (reasonable belief) to the *Terry* standard (reasonable suspicion).

Qualified immunity has been applied in the specific context of a *Terry* stop. *Puliafico v. County of San Bernadino,*

42 F.Supp.2d 1000, 1007-8 (D.C. Cal. 1999); *Courson v. McMillian*, 939 F.2d 1479 (11th Cir. 1991).

The letter written by Campbell's attorney was directed to the Tribal Community, not to the law enforcement officers. Although the letter referred to the trespass notice served on Campbell, the letter did not specifically state the trespass notice was incorrectly cited. The letter is merely an opinion by Campbell's attorney as to an action proposed by the Community. Even if these officers had received the letter from Campbell, Sletten testified he based the arrest on the totality of the circumstances. An officer does not have the obligation to follow legal advice given by a stranger. *Johnson v. Outboard Motor Corp.*, 172 F.3d 531 (8th Cir. 1999). Acting contrary to the advice of a suspect's attorney does not violate statutory or constitutional rights of which a reasonable person may have known. Finally, the existence of this letter has nothing to do with the validity of Campbell's arrest for obstructing legal process pursuant to Minn. Stat. § 609.50

Campbell argues he was arrested before Deputy Nibbe even arrived. (Pet. 10). This is in direct contradiction to Campbell's allegations found in this sworn and verified Second Amended Complaint. In the Second Amended Complaint, Campbell asserted that:

> 18. Plaintiff tried to return to his house since Campbell knew that the trespass notice was illegal but defendants Sletten and Nibbe restrained, handcuffed **and arrested him**. (Emphasis added).

There are no allegations in Campbell's Second Amended Complaint that he was arrested as a result of

any actions taken by Sletten before the arrival of Nibbe. Campbell's argument contradicts his own testimony that he was first placed under arrest after he jerked his arms and the officers fell down to the ground. Campbell has repeatedly amended his Complaint and had every opportunity to make such claims. Although this argument makes no sense in light of Campbell's claim in his Second Amended Complaint that his damages arise because he was removed from the property by the officers, nonetheless, even if such arrest claims had been made they would be without merit. The District Court agreed that Campbell's own actions plainly show he was not under arrest. Campbell roamed about the property freely, unaccompanied by any officers, entering and exiting the residence, using the fax machine, calling persons on the phone and so on. (Pet. 19a).

Sletten had received information that Campbell was trespassing. Trespassing is a criminal act contrary to Minn. Stat. § 609.605. If Sletten did not permit Campbell to leave the property – though this is contradicted by Campbell's own testimony that they tried to make him leave – the officer had the right to stop and temporarily detain Mr. Campbell to investigate. A person who is engaged in activity which arouses suspicion of criminal conduct can have his liberty restrained temporarily until the police have investigated the circumstances. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968); *State v. Moffatt*, 450 N.W.2d 116 (1990). Therefore, even if Campbell had made allegations of constitutional violations resulting from meeting Lieutenant Sletten in the driveway, such claims would not have survived summary judgment.

Furthermore, Campbell did not believe he was under arrest when the officers grabbed his arms. As Campbell sets forth in his statement of facts to the Court of Appeals, the officers grabbed Campbell by the arm to give him the chance not to go back into the house and avoid arrest. Campbell states he did not consider himself to be under arrest until that point. He admitted in his Second Affidavit "I was grabbed before either of them arrested me or told me I was under arrest."

Nibbe's and Sletten's action was not only authorized by the *Terry* decision, but by *Adams* where the Court held that "A brief stop of a suspicious individual in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be reasonable in light of the facts known to the officer at the time." *Adams v. Williams*, 407 U.S. 143, 146 (1972).

Campbell has not cited any facts that support his claim that the alleged detention at the driveway exceeded the bounds of a *Terry* stop. The District Court found, based on Campbell's testimony, "that the officers did not arrest Campbell until *after* he pulled away from the grasp of the officers with enough force to drag them to the ground. (emphasis in original). (Pet. 17a). The officers simply wanted Campbell to leave the property but his failure to do so, along with his obstruction of legal process and assaultive behavior, ultimately left the officers no alternative but to arrest him.

III. The Court of Appeals and the District Court properly held that Lieutenant Sletten and Deputy Nibbe are entitled to qualified immunity for Campbell's Section 1983 claims.

Even if the officers' conduct did cause some deprivation of Campbell's constitutional rights, which is denied, they are entitled to qualified immunity against any Section 1983 claims. The standard for establishing the protection of qualified immunity was set forth in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

In *Harlow*, the United States Supreme Court held that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct did not violate purely established statutory or constitutional rights which a reasonable person would have known." *Id.* at 818.

An officer will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have acted in this same manner. However, if officers of reasonable competence could disagree on the issue, immunity should be recognized." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

The analysis in this case must, therefore, focus on whether Campbell has shown a violation of clearly established law and whether any reasonable officer would have acted in similar manner, given the situation the officers faced.

To be shielded by qualified immunity against a claim of unlawful arrest, it is not necessary to establish probable cause. Instead, the threshold is whether there was

arguable probable cause. *Myers v. Morris*, 810 F.2d 1437, 1455 (8th Cir. 1987) *cert. denied* 484 U.S. 828 (1987); *Greiner v. City of Champlin*, 27 F.3d 1346 (8th Cir. 1994); *Gorra v. Hanson*, 880 F.2d 95 (8th Cir. 1989).

> Under this standard, all public officials are protected except the "plainly incompetent" and those who are deemed to have knowingly violated the law.

Id. at 97 (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

Campbell fails to argue how the officers' actions violated previous statutory or constitutional rights of which a reasonable person who have know. Here, for example, after reviewing the police reports, arguments of Campbell's counsel and reflecting on the matter, the State District Court Judge in the underlying criminal action against Campbell found the officers had probable cause to support the charge of trespass against Campbell.

In contrast to Campbell's contention, the District Court and the Court of Appeals properly held the officers had a reasonable belief they had probable cause to arrest Campbell. They had information from the tribal representatives that Mr. Campbell was trespassing and they had a right to rely on that information to formulate their assessment of probable cause. In addition, the Tribal Council Chairman, on behalf of the Tribal Council, had indicated in writing the land belonged to the tribe and Campbell was trespassing. Therefore, the officers at the very least possessed arguable probable cause that Campbell was trespassing. Furthermore, the officers had a reasonable

basis to arrest Campbell for resisting arrest contrary to Minn. Stat. § 609.50.

The Court of Appeals conducted its own analysis of whether qualified immunity was appropriate without application of whether the officers had a "reasonable belief" that they had "reasonable suspicion." Campbell's objection to this term is, therefore, of no consequence.

Campbell's reliance on *Dennison v. Vietch*, 560 F.Supp. 435 (D. Minn. 1983) and *Pellowski v. Burke*, 686 F.2d 631 (8th Cir. 1982), is misplaced because the United States Supreme Court has since held that negligence is not actionable under 42 U.S.C. 1983. *Daniels v. Williams*, 474 U.S. 327 (1986). Since negligence was the basis for the Section 1983 claims in *Dennison* and *Pellowski*, these cases do not advance Campbell's arguments.

Campbell also cites *Smith v. Eley*, 675 F.Supp. 1301 (D. Utah 1987) for the assertion that a Section 1983 action can be premised on negligent investigation. (Pet. 14). Remarkably, Campbell ignores key decisions of the United States Supreme Court and various courts of appeals that hold to the contrary. See *Arizona v. Youngblood*, 488 U.S. 51 (1988); *Williams v. City of Albany*, 936 F.2d 1256 (11th Cir. 1991).

In summary, both the District Court and the Court of Appeals properly held that qualified immunity barred Campbell's claims.

CONCLUSION

Campbell has not set forth any basis for review of the decision of the Eighth Circuit Court of Appeals. Therefore, Respondents respectfully request that the Supreme Court deny his Petition for Writ of Certiorari.

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